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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,048	10/25/2005	Joachim Pelka	03100228AA	5674
30743	7590	10/30/2006	EXAMINER	
WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190			COOLMAN, VAUGHN	
			ART UNIT	PAPER NUMBER
			3618	

DATE MAILED: 10/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/525,048

Applicant(s)

PELKA ET AL.

Examiner

Vaughn T. Coolman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,5-7 and 9-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7 and 9-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Objections*

Claim 12 is objected to because of the following informalities: the word “tube” is misspelled as “rube” in line 5.

Claim 5 is objected to because of the following informalities: the claim limitation “a horizontal axis of rotation” in line 3 has been previously recited in line 6 of the parent claim, claim 1.

Claim 9 is objected to because of the following informalities: the word “tube” is misspelled as “tuber” in line 2.

Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

#### **The following is a quotation of the first paragraph of 35 U.S.C. 112:**

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

**Claims 3, 5, 6, and 9-11 are rejected under 35 U.S.C. 112, first paragraph**, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 3 recites the limitation of two tubes having different diameters, however, the examiner is wondering how oval-shaped tubes, as the specification describes the two tubes, can

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have different diameters, as diameter is a mathematical/geometrical term restricted to use in circular applications? Furthermore, a single oval can have multiple or varying radii; examiner respectfully suggests defining the oval shape more clearly in the claim in order to clarify the scope of the claim limitation. Examiner respectfully suggests using terms such as “scaled” rather than different and “exterior perimeter shapes” rather than diameters.

**The following is a quotation of the second paragraph of 35 U.S.C. 112:**

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1 and 2 are rejected under 35 U.S.C. 112, second paragraph**, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said inclined telescoping member" in lines 15-16. There is insufficient antecedent basis for this limitation in the claim.

Claims 2, 5, 6, and 9-11 have been rejected as depending from a rejected base claim.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-3, and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mundy et al (U.S. Patent No. 5,957,474) in view of Tunkers and Summers et al ('842).**

**[claim 1]** Mundy discloses a wheelchair (10) including:

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a frame (40, 42, 130, 32, 34, 52) including at least one inclined adjustable member (40, 42), said inclined adjustable member inclined upwards in a front-to-back direction,

at least one steerable wheel (28, 30) mounted by a mounting means, said at least one steerable wheel being rotatable about a horizontal axis of rotation (the axle), said mounting means (25) being pivotable relative to said at least one inclined adjustable member,

at least one non-steerable wheel (24, 26) that is connected to the frame in a wheelbase,

a seat (12) which is fastened to the frame, and

wherein the seat has a backrest (shown in FIG 1).

Mundy does not disclose the inclined adjustable member being telescopic or the distance between the axis of rotation and the frame being adjustable.

Tunkers teaches a wheelchair, particularly an electric wheelchair (Page 1, lines 59-62), having a telescopic adjustable frame member (9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Mundy with the telescopic frame member as taught by Tunkers, since such a modification would provide the advantage of automatic adjustment of the distance between the at least one steerable and non-steerable wheel, for variable stability. Tunkers and Mundy each teach varying the center of gravity to render the wheelchair stable. Mundy accomplishes this by moving the non-steerable wheel from one axle location to another (54-57). Tunkers teaches automatic means to accomplish the same result.

Neither Mundy nor Tunkers teach the distance between the axis of rotation and the frame being adjustable.

Summers teaches an adjustable wheelchair wherein the distance between the axis of rotation of the steerable wheels (64, 65) and the frame is adjustable (Column 4, lines 1-9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Mundy as modified by Tunkers with the adjustable axis of rotation as taught by Summers, since such a modification would provide the advantage of adjusting the ride height of the wheelchair to suit the user's preferences.

The combination would disclose the axis of rotation having the ability to be adjusted in accordance with telescoping of the inclined telescoping member whereby an axis about which said mounting means is pivotable (shown in FIG 2) is made substantially vertical. One would be motivated to adjust the distance in order to reduce horizontal loads on the parts of the mounting means assembly.

**[claim 2]** Tunkers further teaches the frame being telescopic.

**[claim 3]** The combination would disclose the inclined adjustable member including at least two concentrically arranged tubes (10, 11 – Tunkers) of different diameters. Tunkers shows the at least two concentrically arranged tubes being comprised of an outer tube (10) and an inner tube (11), wherein said inner tube pushes into said outer tube, and wherein the at least two concentrically arranged tubes are fixed by at least one clamping element (page 1, lines 103-107).

**[claim 5]** Mundy further shows the at least one steerable wheel being mounted in a fork in a manner such that it can rotate about [said] horizontal axis of rotation and the fork being able to pivot about a vertical axis. The combination would disclose the fork being connected to one of the at least two concentrically arranged tubes.

[claim 6] Summers further shows a plurality of vertically spaced holes (70) being provided at a lower end of the fork.

[claim 7] Mundy further shows a position of the seat in relation to the frame being adjustable (via 76, 78, 80 or 44).

**Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tunkers in view of Mundy.**

[claim 12] Tunkers discloses a wheelchair (FIGS 1-2), particularly an electric wheelchair, including:

- a frame (9) which has telescopic tubes (10, 11),
- a seat (24) fastened to said frame, said seat having a backrest (FIG 1),
- at least one steerable wheel (3, 4) which is mounted rotatably about a horizontal axis (7) of rotation and is connected to a first tube (10) of said telescopic tubes,
- at least one non-steerable wheel (1, 2) which is connected to a second tube (11) of said telescopic tubes,
- wherein a wheelbase between said at least one steerable wheel and said at least one non-steerable wheel is adjustable in an infinitely variable manner by telescopic extension of said telescopic tubes (Page 1, lines 83-94),

Tunkers does not disclose the distance between the horizontal axis of rotation of the at least one steerable wheel and the frame being adjustable or the telescopic tubes being inclined with respect to a tire contact area of the wheels.

Mundy teaches a wheelchair wherein a distance between an [said horizontal] axis of rotation of at least one steerable wheel (28, 30) and a frame (shown in FIG 1) being adjustable (utilizing the multiple axle locations of the non-steerable wheel when in an aligned relationship with frame member 40 as

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taught), and further teaches the frame members that are connected to the steerable wheels (28,30) and the non-steerable wheels (24, 26) are inclined with respect to a tire contact area of the at least one steerable wheel and the at least one non-steerable wheel. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Tunkers with the adjustable wheel/frame configuration and the inclined frame as taught by Mundy, since such a modification would provide the advantage of increasing ground clearance when negotiating vertical obstacles such as curbs.

**Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mundy in view of Tunkers and Summers and further in view of Dinger (U.S. Patent No. 4,824,303) and Peter et al (U.S. Patent No. 3,847,493).**

[claims 9-11] Mundy in view of Tunkers and Summers discloses all of the elements of the claimed invention as described above except for the clamping element being positioned between said inner tube and said outer tube and the details of the clamping element structure. Dinger discloses a clamping element including a first member (3) having tapered ends (5, 7), and second (9) and third (11) member[s] each having a tapered end (13, 15 respectively) and engaging a tapered end of said first member, and means for compressing (21, 17, 25) said second and third members against said first member. Dinger also shows the first second and third members being tubes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the wheelchair shown by Mundy as modified by Tunkers and Summers with the clamping element as taught by Dinger, since such a modification would provide the advantage of specific locking means, as suggested by Tunkers, having a large clamping surface in order to avoid overstressing and deforming the inner and outer tubes.

Dinger does not show the clamping element being positioned between an inner and outer tube, however it is obviously capable of performing in the claimed manner. Evidence of such is shown by



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Peter, who teaches clamping elements of a substantially similar construction and operation to the clamping elements of Dinger being positioned between inner and outer tubes (8 and 2 respectively).

Examiner notes that although a non-hollow shaft is shown by Peter, it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a hollow shaft as is old and well known in the art. Furthermore, utilizing a hollow shaft would have no effect on the operation of the clamping elements.

### *Response to Arguments*

Applicant's arguments with respect to claims 1-3, 5-7, and 9-12 have been considered but are moot in view of the new ground(s) of rejection.

Examiner would like to respond to certain arguments set forth by the applicant.

In response to the underlined statement on page 6 regarding wheelchair systems that increase the overall length of the wheelchair, examiner notes that the overall length of the claimed invention is also increase when the telescopic members are extended, also restricting the applicant's claimed invention's ability to turn.

Applicant also asserts that the Tunkers frame would not be modified to be inclined, due to the purpose of the frame members being to allow the relative position of the seat to the wheel to be varied and to increase stability. Examiner contends that neither of these features is impacted negatively if the frame of Tunkers were to be inclined, especially due to the fact that Tunkers discloses means for extending and retracting the telescopic members that would operate irrespective of any inclination.

In response to the argument that if the height of guide wheels (4) of Tunkers were either lowered or raised, then one could not adjust the spacing between the guide wheels and the

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powered wheels, examiner points to the above description of the powered extension/retraction means of Tunkers as evidence that one certainly could still adjust the spacing referred to by applicant. The statement that "Tunkers depends on the ability to slide the frame members on a path parallel to the ground" is pure speculation, as this dependence is not present in the Tunkers disclosure.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Bagget et al (U.S. Statutory Invention Registration No. H906) and Havelka et al (U.S. Patent No. 3,971,186) teach clamping units substantially similar to that disclosed in the instant application.

James (U.S. Patent No. 5,480,172) teaches a wheelchair having an inclined frame member, wherein the inclination is front-to back of said wheelchair.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

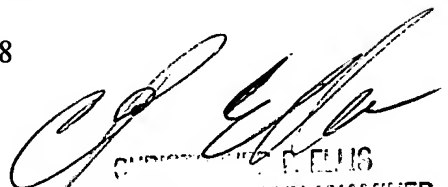
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vaughn T. Coolman whose telephone number is (571) 272-6014. The examiner can normally be reached on Monday thru Friday, 8am-6pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
vtc 10/25/06

Travis Coolman  
Examiner  
Art Unit 3618

  
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